

1 something that you have seen or used yourself?

2 A I have used it, yes.

3 Q It means "for your information?"

4 A That is correct.

5 Q Okay. Are you saying then that you sent a copy of
6 this letter along to Mr. Price basically FYI, that is for
7 his information because you were concerned that McKinnon
8 would not have given it to Mr. Price?

9 A Not only that. Mr. Price also received some STAs.
10 He also signed some of the STAs or some of the documents
11 before and I just wanted him to know also some of the
12 comments that Jennifer Richter said in these letters as
13 well.

14 Q Okay. Can you identify for us specifically
15 anything in here for which you wanted Mr. Price to advise
16 you? You used the term, "Peter, pls. review and advise."
17 Is there anything specific here that you can identify?

18 A As I mentioned, some of the new buildings, we
19 needed to go with the STAs, as well, and that required
20 spending money to get the STA, to update the STA, and I
21 also, as part of the letter Jennifer Richter mentioned, that
22 we need to have -- although this letter wasn't the first
23 time, we discussed that well before that that for a special
24 temporary authority, you need to have a reason to have the
25 Commission issue an authorization for the path and part of

1 it would be the time that it takes to turn the buildings --
2 and operate the buildings and some of the contractual
3 obligation we had to our customers, which Mr. Price was more
4 aware of that because of the legal part of the contract.

5 So I just wanted him to know the time lines and
6 why we are going with the special temporary authorities the
7 majority of the time because of some of these applications
8 and licenses will take time to be obtained. So I just
9 wanted him to know and if -- by advice, I mean that we
10 discussed that on the meetings with the marketing (sic) that
11 provided some forecasting and give us some more time.
12 That's --

13 Q Did you Mr. Price discuss this letter after April
14 28?

15 A I don't recall discussing specifically this
16 letter, no.

17 Q Do you recall discussing any of the topics
18 mentioned in the letter after April 28, 1993?

19 A We discussed, overall, on the marketing meetings
20 that we had with Peter Price, about the time lines and
21 general time that it takes the systems to be operated and we
22 need an STA for some of the buildings that needed to be
23 activated and we were looking at that. So things was in
24 general just basically sending it to him that he had some
25 idea in case he doesn't know.

1 Q If you take a look at the second page of the
2 letter, the paragraph that begins in the middle of the page.
3 There's a sentence that says, and I'm reading here, "If
4 Liberty is desperate to be in operation of a station, either
5 new or modified, and grant of the underlying application is
6 pending, let me know and we can apply for an STA."

7 Does that suggest to you that, at least under
8 Jennifer's time, that she had not been applying for STAs
9 prior to the date of this letter?

10 A No, this tells me that they was writing to Bruce
11 McKinnon and letting him know. I -- but I discussed that
12 well prior to that. We were getting STAs for some of the
13 modified system and -- well before that. So that doesn't
14 tell me that.

15 Q Was there some procedure in place by which Ms.
16 Richter had to get authorization from Bruce McKinnon as
17 opposed to you to apply for STAs?

18 A You have to ask her. She wrote that letter. I
19 didn't.

20 Q No, but what I'm asking you, you know, about the
21 procedure that was in place between you and Jennifer --

22 A Oh, no, between me and her, that -- at the time,
23 at the time of these we had the majority of the licenses and
24 some of the modification was taking place. She would have
25 had to, again, based on the minor or major, applied for a

1 new file on the authorization and if that was a building
2 that it was not as part of that license, she was supposed to
3 modify -- apply for the filing and then apply for the STA.

4 Q But as far as you know, did she have to get
5 permission from anybody other than you to file for an STA --

6 A No.

7 Q -- prior to April 28?

8 A No, basically, I would tell her that we need an
9 STA. It was already being discussed with her. She would
10 have paid -- she would have had to ask the head office to
11 sign the checks to pay for it. Then, at that point, she
12 would have contacted somebody else, but I would have
13 probably discussed most of the authorization with her.

14 Q Did Mr. Price tell you to go ahead and file for
15 STAs some time after April 28, 1993?

16 A Sure, we discussed that and -- in the meetings,
17 and we said that if certain time lines are not going to be
18 met waiting for the license then we suggested we need an STA
19 and he would say go ahead for it.

20 (Pause)

21 Q Okay, I want you to turn back to one of the
22 exhibits that you were looking at this morning before we
23 broke for lunch, and that's Exhibit 14. I think it's in a
24 different book than the one you have in front of you.

25 A I'll find it.

1 Q And if you would turn to page five of that
2 exhibit?

3 MR. SPITZER: Bruce, is this --

4 MR. BECKNER: It's the installation compliance
5 report. It's the February 23, 1995 report.

6 THE WITNESS: I have it.

7 BY MR. BECKNER:

8 Q Do you have it, sir?

9 A Yes, I do.

10 Q I want to direct your attention specifically to
11 the entry here for the address at 33 West 67th Street. Do
12 you see that? It's about two-thirds down the page.

13 A I'm sorry, which page is that?

14 Q Page 005.

15 A Repeat the building address please?

16 Q Thirty-three West 67th Street.

17 A Yes, I found it.

18 Q Do you see that has a start date of 6/93 and an
19 end date of 6/30/93?

20 A Yes.

21 Q Okay, do you recall signing an application for a
22 path to serve that address on June 11, 1993?

23 A Signing what? Could you repeat that again?

24 Q Do you recall signing an application, and FCC
25 application to add a path to serve that address on June 11,

1 1993?

2 A As I testified previously, all of the applications
3 I have already signed the second pages while -- and I would
4 hand it to Pepper & Corazzini, and they would file for the
5 applications. So I'm sure that I don't think I did that
6 because that wasn't customarily what I would do.

7 MR. BECKNER: Your Honor, may I hand the witness a
8 copy of the application?

9 JUDGE SIPPEL: Show Mister --

10 MR. BECKNER: I have extras --

11 MR. SPITZER: For what purpose?

12 MR. BECKNER: I wanted to at least identify his
13 signature.

14 MR. SPITZER: Well, are we authenticating a
15 document that's coming into evidence? I mean -- this is not
16 -- you could show him 100 pieces of paper with his signature
17 and what's the point?

18 MR. BECKNER: The point is to establish, if he
19 can, who put the date of June 11, 1993, next to his
20 signature. Now maybe he can't testify to that. Maybe he's
21 never seen this. I don't know.

22 JUDGE SIPPEL: Well, yeah, you're going to have to
23 have it marked as an exhibit if he's going to testify to it
24 though.

25 MR. BECKNER: I mean just -- this is the same

1 application which we appended to our motion, Your Honor, you
2 know, when we first sought leave to reopen the hearing.

3 JUDGE SIPPEL: It's in the motion papers?

4 MR. BECKNER: Yes, sir, so I mean this is not a
5 new document.

6 JUDGE SIPPEL: All right, well, let's approach the
7 witness with a document.

8 Do you have a copy for Mr. Spitzer?

9 MR. BECKNER: Yes.

10 JUDGE SIPPEL: And we'll --

11 One for the witness' lawyer, I hope?

12 JUDGE SIPPEL: This is what, Exhibit C to your
13 motion?

14 MR. BECKNER: May I have a look at it, sir? I
15 think so. I assume that's it.

16 Would you like a copy of that --

17 (Pause)

18 JUDGE SIPPEL: Let's go off the record a minute.

19 (Whereupon, a brief recess was taken.)

20 JUDGE SIPPEL: Do you have --

21 THE WITNESS: Yes, I do.

22 JUDGE SIPPEL: The witness has the document and --

23 BY MR. BECKNER:

24 Q All right, Mr. Nourain, do you have in front of
25 you now a copy of a application for station authorization in

1 private operational fixed microwave radio service? At the
2 top it has a stamp, "FCC June 16, 1993, MLP," and it has
3 file number 0794824 also stamped on it.

4 On the second page of the application form, there
5 is what appears to be your signature

6 A Yes.

7 Q Is that in fact your signature?

8 A That's correct.

9 Q And to the right of that, in typed letters, or
10 typed numerals, are the numerals 6/11/93. Now are you
11 saying that you don't recall whether or not you signed this
12 document on June 11, 1993?

13 A I'm sure I didn't sign it on June 11, 1993. I
14 signed it on a bunch of documents -- a bunch of copies of
15 the same signature page, and prior to this time, sent it to
16 Pepper & Corazzini to use that for their filing and STAs.

17 Q Now isn't it true that, Mr. Nourain, that prior to
18 this application it was Mr. McKinnon, and not you, who were
19 signing Liberty's microwave applications?

20 A I didn't catch part of your question. Could you
21 repeat it please?

22 Q It's true, is it not, that prior to the date of
23 this application, which appears to be June 16, 1993, it was
24 Mr. McKinnon who signed Liberty's applications, and not you?

25 A I don't recall this at that particular date, but I

1 know that before I started signing applications, he was
2 signing applications.

3 Q Okay, and --

4 A I can answer that question, but I don't know was
5 it prior to June 11 he was doing it or not. I don't know.

6 Q Okay, well, you remember that Mr. McKinnon left
7 employment with Liberty on May 14, 1993? Do you remember
8 that?

9 A Yes, I do that, yes.

10 Q Okay, when Mr. McKinnon was still employed at
11 Liberty, wasn't he the one who signed Liberty's
12 applications?

13 A I'm not so sure of that. It might have been at
14 some point that he was still at Liberty and I was -- I would
15 be starting to sign them. I don't know. I don't remember.

16 Q Now are you saying that immediately, from the very
17 beginning of when you started to sign applications for
18 Liberty, you signed a whole lot of blank forms and shipped
19 them to Pepper and Corazzini?

20 A No, that's not what I'm saying. That's what
21 you're saying.

22 Q No, I'm asking you --

23 A I say that -- I said it might have been at some
24 point there, possibly some of the modifications that needed
25 to be done, and I signed that. It might have not been. I

1 don't recall right now. All I know is that I would sign
2 copies of the second pages and I will hand it to Pepper &
3 Corazzini to use that for applications and any -- for
4 applications, filing the applications or the technical
5 modification to some of the applications and licenses.

6 Q Do you know whether or not you activated the path
7 to serve -- I'm sorry -- 33 West 67th Street before you had
8 authority to do so?

9 A Repeat your question again?

10 Q Do you know whether or not you activated the path
11 to serve 33 West 67th Street before you had authorization
12 from the FCC to do so?

13 A I never turned on any path that I didn't think
14 that I had an authorization, no.

15 Q So you're saying that when you turned this path on
16 to serve 33 West 67th, you thought you had an authorization
17 from the FCC?

18 A Yes.

19 Q Okay, and did you -- was this based on looking in
20 your file of licenses?

21 A I don't recall right now.

22 Q Okay, was it based on having an STA?

23 A We could have had a filing for it and I -- it
24 needed to be modified. It could have been installed. I
25 have no idea right now. I don't remember.

1 JUDGE SIPPEL: Do you have more questions of this
2 witness with respect to this application?

3 MR. BECKNER: No, Your Honor, I was about to move
4 to the affidavits.

5 JUDGE SIPPEL: Well, I do appreciate that, but
6 we're going to have to move this document into the record so
7 that this can be filed in the transcript.

8 MR. BECKNER: All right.

9 JUDGE SIPPEL: So let's give it a -- this will be
10 what, your No. 66?

11 MR. BECKNER: Yes, Your Honor, that would be 66.

12 (The document referred to was
13 marked for identification as
14 TW/CV Exhibit No. 66.)

15 MR. SPITZER: We have no objection, Your Honor, so
16 I don't know if you -- in terms of laying a foundation or
17 anything else, we don't object to it.

18 JUDGE SIPPEL: Thank you very much. This document
19 which is marked for identification, and I'll hand my copy to
20 the reporter, as TW/CV No. 66 --

21 MR. BECKNER: Do we have enough to give him --

22 JUDGE SIPPEL: When he stamps this -- you can
23 retrieve this other report when we close the record and make
24 a copy and get it back to him, if that's appropriate?

25 So this can be identified in the record -- would

1 you just identify for the record what this document is?

2 MR. BECKNER: Yeah, I identify it for the record
3 as a copy of an application by Liberty Cable Company for a
4 microwave path with FCC -- a stamp on the top, "FCC, June
5 16, 1993, File No. 0794824," and it consists of the
6 application form itself and various exhibits that are
7 attached to it and including a copy of the transmittal
8 letter, dated June 15, 1993, with what appears to be the
9 signature of Jennifer L. Richter. And the top of that
10 letter is stamped, "FCC/Mellon," M-E-L-L-O-N, "June 15,
11 1993." That's the last page of the exhibit.

12 JUDGE SIPPEL: Great, may I see that?

13 All right, that's marked -- that's identified for
14 the -- as your Exhibit No. 66 and, there being no objection,
15 it's received in evidence as TW/CV Exhibit No. 66.

16 (The document referred to, was
17 marked for identification as
18 TW/CV Exhibit No. 66, was
19 received in evidence.)

20 All right, as I say, the reporter is entitled to
21 have one more copy and we can handle the mechanics of that
22 when we go off the record.

23 MR. BECKNER: Yeah, Your Honor, I apologize. I
24 forgot to account for the fact that the witness is
25 separately represented here and I had a -- was obligated to

1 give his lawyer a copy of the exhibit, as well as the
2 counsel for the various participants.

3 JUDGE SIPPEL: All right, we'll fix it up.

4 MR. BECKNER: Your Honor, we've been going for
5 about an hour and 15 minutes, can we just take a short break
6 because this is a good breaking point. What I was going to
7 return to is the --

8 JUDGE SIPPEL: The affidavits.

9 MR. BECKNER: -- the affidavits, which is a
10 distinct subject from what we've been discussing thus far.

11 JUDGE SIPPEL: That's a good idea. We'll come
12 back at 20 minutes of 3:00, by the clock in the back of the
13 room, in ten minutes.

14 All right?

15 MR. BEGLEITER: Are we finished now with this
16 area?

17 JUDGE SIPPEL: Yeah, that's -- we're in recess for
18 ten minutes. Thank you.

19 (Whereupon, a brief recess was taken.)

20 JUDGE SIPPEL: Please be seated.

21 MR. WEBER: You know, are you catching it from me,
22 Your Honor?

23 JUDGE SIPPEL: It's a summer cold I guess, or an
24 oncoming summer cold.

25 MR. WEBER: And they just -- they're the ones that

1 linger the most, so I've got to apologize if I'm
2 interrupting with coughing here.

3 JUDGE SIPPEL: That's okay --

4 You're on, Mr. Beckner.

5 MR. BECKNER: All right, thank you, Your Honor.

6 JUDGE SIPPEL: You're still under oath, Mr.
7 Nourain.

8 MR. BECKNER: Mr. Nourain, I'd like you to -- the
9 exhibit book that has Exhibits 13 and 18 in it, and I don't
10 know which of the three books -- it may be the one that's
11 there to your right. Yes, I think it's that one.

12 I'm going to ask you about both Exhibit 13 and
13 part of Exhibit 18, and maybe the fair thing to do, since
14 it's been a while since we've discussed it, is to give you
15 the chance, before I ask you any questions, to read Exhibit
16 13 in its entirety, which is a copy of an affidavit, and
17 also perhaps to read Exhibit 18. Is that all right with
18 counsel for Liberty, if we start off that way?

19 MR. SPITZER: Sure.

20 JUDGE SIPPEL: That's fine. You've had the
21 exhibits identified to you and the -- Exhibit 13 was dated
22 February of 1995 and Exhibit 18 is dated May of 1995. So
23 we'll go off the record while you read those.

24 (Whereupon, a brief recess was taken.)

25 JUDGE SIPPEL: Back on the record at 2:54 p.m.

1 BY MR. BECKNER:

2 Q All right, Mr. Nourain, I'm going to direct your
3 attention first to Exhibit 18, which is the document
4 entitled "Surreply".

5 A Okay.

6 Q Behind the actual document itself there is -- in
7 fact, the last page of the exhibit, page 009, is a document
8 entitled, "Declaration of Behrooz Nourain", and there's a
9 signature there and a date, and what I want you to tell us
10 is is that your signature?

11 A That's my signature, yes.

12 Q Yeah, and did you sign it on May 17, 1995, the
13 date that's typed here?

14 A I don't know about the exact date. I didn't type
15 it, but I signed it. The signature is mine.

16 Q Okay.

17 A I don't have any typewriter that types the date
18 though.

19 Q Okay, so someone else typed in that date, as far
20 as you know?

21 A Absolutely.

22 Q Yeah, now the declaration in paragraph two says,
23 "I have read the foregoing surreply," and I'm not going to
24 read the rest of it, but what I want to know -- I want you
25 to tell us is whether or not in fact you read through the --

1 a copy of the surreply before you signed the declaration.

2 A Yeah, it was faxed to me and I looked at it.

3 Q Okay, now I'd like you to turn to the actual
4 surreply itself, page three of the surreply, which has,
5 among other numbers, the number 003 at the bottom. Do you
6 have that?

7 A Yes.

8 Q Okay, there's a sentence here that says, and I'm
9 reading, "Mr. Nourain was unaware of the petitions against
10 Liberty's applications until late April of 1995." Exhibit 2
11 -- and Exhibit 2, I believe, is your declaration.

12 When you signed the declaration, was that
13 statement that I just read true and correct as far as you
14 know?

15 A As far as I know, yes.

16 Q Okay, now what I'd like you to do is to turn to
17 Exhibit 13, which is the affidavit of Behrooz Nourain, dated
18 February 21, 1995.

19 A Yes.

20 Q Okay, again, if you would look at the -- actually,
21 it's page 005 of the exhibit? There is a signature line.
22 Is that your signature there?

23 A Yes.

24 Q And the date there by the notary stamp is the
25 twenty-first day of February of 1995, correct?

1 A That's correct.

2 Q Okay, if you back up one page in this affidavit,
3 the page marked 005, numbered paragraph five begins by
4 saying, "I am advised that Time Warner has opposed Liberty's
5 pending application to the Federal Communications Commission
6 for various 18 gigahertz microwave licenses."

7 Now the question I want you to answer for us, if
8 you can, is whether or not this statement that I just read
9 from your February of 1995 affidavit is inconsistent with
10 the statement in the surreply, which you verified, that says
11 you were unaware of petitions against Liberty's applications
12 until late April, 1995?

13 A It is inconsistent?

14 Q Yeah, the question is are those two statements
15 inconsistent with each other?

16 A Not the way I view it.

17 Q Okay, why don't you tell us how you view it, sir?

18 A Okay, looking at the affidavit of February 21,
19 when I was working with -- to get this affidavit together,
20 it was -- the discussion was about interconnecting
21 buildings, which is what Liberty calls I-block --

22 Q Yes.

23 A -- and if you read the statement, it says, "for
24 the various 18 gigahertz," and I was informed by the lawyer
25 that I was working with on these that with the various 18

1 gigahertz path, they were talking about particularly those
2 interconnecting applications that the whole affidavit is all
3 about.

4 The one on the 18 is the one that after we found
5 out that we were -- we've turned up some of the 16 or so
6 paths, without authorization, after I found out in the
7 latter part of April. That was the time that I knew that we
8 were not authorized to -- we were not given authorization by
9 FCC at that time. So the May is correct in its own content,
10 that I did not know 'til around April 28 that the petition
11 is for all the paths while the February, at that time, I
12 knew -- I was understood (sic) that it was only for the I-
13 blocks. So the two are completely two different things.

14 Q Okay, now you said that with respect to the
15 February affidavit, you -- did you say that you were told
16 the petitions were for the I-blocks? Did I hear you right?

17 A We had to discuss about the petition itself. We
18 were talking about the whole -- the whole affidavit is
19 started as some technical information needed to be cleared,
20 which it indicates on the affidavit itself, about 18
21 gigahertz path and the I-blocks. And based on that
22 information, I had this affidavit put together solely for
23 the interconnecting buildings. So those were the buildings
24 at that time. I was told that, yes, there is a petition
25 to -- for those buildings and as such that we did not

1 obviously operate any of them by microwave.

2 Q When you were told, at that time, that there
3 were -- okay, well, let's just back up a second -- a
4 clarification.

5 What was going on that was the matter of
6 discussion in the February 25 -- I'm sorry, the February 21
7 affidavit, was that Liberty was -- had applied for microwave
8 licenses to replace hard wire connections, is that what was
9 going on?

10 A No, not that I know. We applied for the microwave
11 for various interconnecting buildings. Whether we were
12 going to install them or not, nobody has told me about that.
13 I was just told to go and try to get a license for them.

14 Q But these licenses -- if I understood you right,
15 these licenses that you applied for were to serve buildings
16 that you were already serving by hardwire, is that right?

17 A Not necessarily. I don't know. I was just told
18 to go -- these are the interconnecting building and I was
19 told to go and try to get a license for them in case we want
20 to serve them.

21 Q Well, I take it, Mr. Nourain, from your testimony,
22 you're saying that there's no inconsistency between these
23 two affidavits because they refer to different groups of
24 applications that Liberty had filed. I mean is that right?

25 A The first affidavit has nothing to do with an

1 application. I was told by the lawyer that there was some
2 person, which I guess the name is here on my affidavit, Mr.
3 Mikhail had in some way said something on his affidavit or
4 his letters about some of the technical aspects of the
5 microwave system, and my job was that -- to technically
6 answer that and that's what I did.

7 If you notice, all the affidavit is about
8 technical part of what the 18 gigahertz application is
9 working to answer the correct assumption that that gentleman
10 had, based on one building, which was 60 Sutton Place, which
11 was referred there (sic), and that was the only discussion I
12 had with our attorney at the time about this. And at the
13 end, he mentioned about -- I asked him that what is all this
14 thing about besides that? He mentioned there is some
15 petition against those I-block or interconnecting buildings
16 and we should not operate them. And I said, "Fine." And
17 that's all this thing is applying to, nothing more, nothing
18 less, on my knowledge, only the I-block buildings.

19 Q And you had filed applications for microwave paths
20 to serve the I-block buildings, is that right?

21 A We have filed a lot of applications for various
22 buildings, sir. Whether we were going to serve them or not,
23 that was a different issue.

24 Q Okay, well, I'm just reading the language here,
25 Mr. Nourain, which says, "I," meaning you, Mr. Nourain, "am

1 advised that Time Warner has opposed Liberty's pending
2 application to the Federal Communications Commission for
3 various 18 gigahertz microwave licenses," and licenses is
4 plural, in other words, more than one. And you've talked
5 about, in your testimony today, and the affidavit talks
6 about, a license to serve 60 Sutton Place, but apparently,
7 from the language here, there is more than one application
8 which you say you're aware that Time Warner had opposed?

9 A That's correct. We had more than on I-block.
10 There were a number of I-blocks, so that's why it's plural.
11 And it's various. To me, it's only about I-block building.

12 Q Okay, so --

13 A And at the last -- one more comment I want to make
14 is that I did not write this. The lawyer wrote it and I
15 just read it and I signed that. That's an affidavit by
16 attorney. I don't have to, you know, elaborate on that, how
17 that's been written.

18 Q Well, I will ask you the questions and bring the
19 information out and if don't succeed in bringing everything
20 out, I'm sure that Liberty's counsel will fill in whatever
21 gaps I might have left.

22 A That's fine. We'll do that.

23 Q And I'll get to that in a minute, but just stay
24 with me a second because I'm trying to --

25 A Sure.

1 Q -- see if we can get on the record exactly what it
2 was that you were saying that you were aware that Time
3 Warner had opposed in your February, 1995 affidavit, and I'm
4 trying to be as clear as I can about that. You're saying
5 that you were aware that Time Warner had opposed Liberty's
6 applications for various 18 gigahertz microwave licenses to
7 serve I-block buildings? Would that be correct?

8 A To me, the "various applications" means only the
9 I-block building, yes. That's all this affidavit says, for
10 the various 18 gigahertz. That means not all the 18
11 gigahertz, only for various, and then the explanation in
12 there was that this -- the petition is only for the -- the
13 petition that we talked about -- that's for only those I-
14 block buildings. There were a number of them. There were
15 not one or two.

16 Q Okay.

17 A And that's what that affidavit was, at the time,
18 and the contents completely verifies that, that we were
19 talking about the I-block buildings.

20 Q Okay, and let me -- all right, let me just move to
21 the statement that you made just a few minutes ago regarding
22 the actual author of the affidavit. Let's sort of get that
23 down.

24 Who was the person who actually wrote the language
25 in the affidavit? I take it, it wasn't you?

1 A No, it wasn't me. It was Jim McNaughton.

2 Q Okay, and who's he?

3 A He was another attorney for Liberty Cable.

4 Q All right, now is Mr. McNaughton the person who
5 told you that Time Warner had opposed Liberty's 18 gigahertz
6 applications?

7 MR. SPITZER: Your Honor, I'd like to object. I
8 think that if that were the case, and I'm not saying it was
9 or it wasn't, but that would have been privileged
10 communication.

11 MR. BECKNER: Your Honor, this has been testified
12 to on deposition. I can bring up the reference if you want.

13 MR. SPITZER: If you're representing that's been
14 testified to, that's fine. I'll let the question go.

15 MR. BECKNER: Give me a second, Your Honor --

16 JUDGE SIPPEL: Off the record.

17 (Whereupon, a brief recess was taken.)

18 JUDGE SIPPEL: Back on the record.

19 Counsel for Liberty has withdrawn the objection --

20 MR. BECKNER: Okay.

21 THE WITNESS: Oh, I need that question again
22 please.

23 BY MR. BECKNER:

24 Q Was it Mr. McNaughton who informed you that Time
25 Warner had opposed Liberty's 18 gigahertz applications for

1 what you called the I-block buildings?

2 A Yes.

3 Q Okay, did you in fact receive a copy of the
4 opposition paper that Time Warner had filed at the SEC?

5 A No.

6 Q No one at Pepper & Corazzini sent that to you?

7 A No.

8 Q And at the time that you executed this affidavit,
9 that's been marked as Exhibit 13, the sole basis for this
10 statement made in paragraph five was the information that
11 Mr. McNaughton had given to you orally, is that correct?

12 A That's correct. He told me verbally on the phone.

13 Q Are you saying that Mr. McNaughton specifically
14 limited his statement to you by saying that Time Warner had
15 opposed the 18 gigahertz license applications for the
16 I-block buildings?

17 A No, the whole discussion was about I-block. He
18 was -- he just picked up the phone and talked to me about
19 the -- some technical answers to Time Warner's affidavit by
20 Mikhail -- I don't know his last name -- and it says that
21 this guy is having all these questions about 60 Sutton and
22 look at it, we need to answer that, and I just sat there and
23 went over what he says and a lot of them I felt that
24 technically is incorrect and I clarified that, which is a
25 part of the affidavit.

1 And at that point, I said, "What is this all
2 about?" He said, "This is about some I-block petition which
3 is against -- some petition against I-block building by Time
4 Warner," and that was our conversation. And he mentioned
5 that, based on that, all -- don't build any microwave system
6 here.

7 And I said, "Okay." That was it.

8 JUDGE SIPPEL: Can I just get a clarification as
9 to what he means by I-block buildings?

10 THE WITNESS: Interconnection building. They're
11 the buildings that connect -- the two buildings that connect
12 with each other but they were not -- they are wireless or
13 microwave.

14 JUDGE SIPPEL: They're -- it's coaxial cable?

15 THE WITNESS: They're coaxial, that's correct.

16 And they are within the block, within one block. But to
17 clarify what we define I-block is if you look at one block
18 of the street, which does not cross the street, within that
19 block connecting the buildings, which microwave signal is in
20 one of them, but in order to serve the whole block we will
21 go by coax. between building to building and they were
22 defined as I-block.

23 JUDGE SIPPEL: Thank you.

24 BY MR. BECKNER:

25 Q And just to -- one further elaboration on that